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Citizen Suit Enforcement/Clean Air Act: U.S. Department of Justice Alleges Constructive Denial of Request to Intervene in NAACP's Challenge to Southaven, MS Data Center

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The United States Department of Justice ("DOJ") filed a Notice of Appeal on September 18th to the United States Court of Appeals for the Fifth Circuit ("5th Circuit") in regard to its previously filed Motion for Intervention and Dismissal in the pending case, *NAACP and NAACP MISSISSIPPI STATE CONFERENCE, v. X.AI and MZX TECH LLC*. See Case No. 3:26-cv-00074-DMB-JMV.

DOJ argues that it is appealing the 5th Circuit's:

... constructive Order denying the United States' amended motion for intervention and dismissal.

DOJ previously filed on June 15th in the United States District Court for the Northern District of Mississippi, a Motion for Intervention and Dismissal in the citizen suit action filed by the NAACP and NAACP Mississippi State Conference (collectively, "NAACP"), requesting a preliminary injunction against x.AI and MZX Tech LLC (collectively, "x.AI") that would prohibit operations that allegedly violate the Clean Air Act.

The NAACP's previously filed complaint alleges that between August and December of 2025, x.AI installed and began operating 27 gas turbines (Colossus II Data Center) in Southaven, Mississippi. The data center is stated to power the company's chat bot (GROK). It is alleged to have begun operating without a permit. NAACP asked that the United States District Court determine that x.AI violated the Clean Air Act and require it to:

- Cease operating unpermitted turbines.
- Install best available control technology.
- Pay financial penalties.

DOJ's Motion opposes the NAACP filing and alleges:

- The United States is entitled to intervene in this Clean Air Act citizen suit.
- Consistent with the role of executive power under Article 2 of the Constitution, the United States' right to intervene includes a right to dismiss this entire enforcement action.
- The Clean Air Act does not authorize citizen-enforcement actions that seek relief the government enforcers choose to forego

- Dismissal is required to avoid serious constitutional questions arising from the alternative interpretation of the Clean Air Act.

The September 21st edition of *InsideEPA.com* explains:

... EPA appeals “from this Court’s August 24, 2026, constructive Order denying the United States’ amended motion for intervention and dismissal,” the agency says. The district court did not issue a written order, however, and EPA bases its argument on a transcript of a case management conference held that day, in which the agency says the court indicated it will likely decline EPA’s motion to intervene.

“Barring a written ruling entered on or before September 10, the United States, for purposes of appeal, will treat the absence of a written ruling as a constructive denial of its amended motion for intervention and dismissal,” EPA said at the time.

In other words, despite the fact that the United States District Court has not entered an Order denying the Motion for Intervention, DOJ is arguing that this is a “construction denial” enabling it to file the appeal before the 5th Circuit.

A copy of the Notice of Appeal can be found [here](#).